

MARKUP

~~1052~~ ~~Administrative Procedure Rules and Regulations Promulgation~~ ~~1052.0.0~~ ADMINISTRATIVE PROCEDURE, RULES PROMULGATION

~~1052.1~~ 1052.0.1 This policy establishes a uniform method and system for promulgation of rules ~~and regulations within~~by the Department of Human Services (DHS) in accordance with the Arkansas Administrative Procedure Act (Act), Ark. Code Ann. §§ 25-15-201 et seq. The Act requires that agencies promulgate rules of practice describing the nature and requirements of all formal and informal procedures including forms and instructions used by the agency.” All rules promulgated must comply with federal and state laws.

~~1052.2~~ 1052.0.2 This policy is applicable to all divisions and offices within DHS and to all managers and staff responsible for ~~the promulgation of~~ rules within their particular division or office.

~~1052.1.0~~ ~~1052.3~~ **Definitions**

~~1052.3.1~~

1052.1.1 Emergency Rule - A policy or procedure that requires immediate implementation due to ~~a finding of~~ imminent peril to the public health, safety, or welfare, or loss of federal funds.

~~1052.3.2~~ 1052.1.2 Mark-up - If an already existing rule is being amended, a copy of the proposed amendment indicating significant changes. A rule is to be marked up by striking the old language and inserting and underlining the new language. This is to be submitted in typewritten format.

1052.1.3 Notice Of Rule Making - A general clear statement of the subjects and issues involved, and the time, place, and manner in which interested persons may present their views thereon.

~~1052.3.4~~ 1052.1.4 Rule - Any Agency statement of general applicability and future effect that implements, interprets, or prescribes law or policy; or describes the organization procedure or practice of any agency. "Rule" does not mean any statement concerning the internal management of DHS or any intra-office memoranda. Policies or procedures that do not ~~have a direct impact on~~ affect the private rights or procedures available to the public are not considered rules that require promulgation.

~~1052.3.5~~ 1052.1.5 Summary of Changes – A summary of the changes made in any revision of a rule.

1052.1.6 Summary of Rule – A summary of the provisions of any new rule in one or more paragraphs.

1052.2.0 Promulgation

~~1052.4.1A.~~ ~~If the rule will be applicable to or have an effect on DHS as a whole, the promulgation steps described below will be carried out by the Office of Administrative Services, Human Resources/Support Services Section, Policy and Administrative Program Management Unit (OAS/PAPM).~~

1052.2.1 The DHS Office of Finance and Administration (OFA) will promulgate rules that apply to more than one DHS division.

~~B-1052.2.2~~ 1052.2.2 If the rule applies only to a particular division, the division will promulgate the rule.

1052.3.0 Executive Staff Review

1052.3.1 The ~~Division or Office shall~~initiating division will prepare the rule in draft form to be reviewed by the DHS Executive Staff.

~~A-1052.3.2 In the case of departmental rules, the draft will then be submitted, preferably as an attachment to an e-mail message (specific e-mail addressee to be ascertained), to OAS/PAPM. For rules affecting more than one division, the initiating division will send that draft rule as an email attachment to OFA, Policy & Administrative Program Management (PAPM) which will, in turn, e-mail the draft to all members of the Executive Staff.~~

~~B. In the case of divisional rules, the originating section will e-mail the draft to the Executive Staff.~~

~~C-1052.3.3~~ The draft is to be accompanied by an Executive Summary consisting of the Summary of Rule or Summary of Changes.

~~D-1052.3.4~~ The Executive Staff will have approximately two weeks to reply with concurrence or with non-concurring comment.

~~1052.4.3 1052.4.0 After approval by the Executive Staff, a Notice of Rule Making (Notice) shall be prepared. The Notice shall be published in a newspaper of general daily circulation for seven (7) consecutive days to afford all interested members of the public up to thirty (30) days opportunity to submit comments, orally or in writing. The Notice shall also be mailed to any person who requested advance notice of rule making proceedings. OCC Approval~~

~~1052.4.4 Prior to newspaper publication, the~~After Executive Staff approval of the draft rule a Notice of Rule Making, Arkansas Register Transmittal Sheet, Arkansas State Library Agency Certification Form, Legislative Questionnaire, Bureau of Legislative Research page, and a Financial Impact Statement shall be prepared and submitted to the DHS Office of Chief Counsel (OCC). OCC shall review the submission within ~~three (3)~~five (5) working days for compliance with the Act and will ~~issue a statement to the appropriate Division or Office finding the rule in compliance or not in compliance. inform the initiating division of its findings.~~ Upon approval by OCC, the Notice of Rule Making may be published.

1052.5.0 Notice of Rule Making

~~1052.5.1 The Notice of Rule Making shall be published in a newspaper of general daily circulation for three (3) consecutive days to afford all interested members of the public up to thirty (30) days opportunity to submit comments, orally or in writing. The initiating division must obtain confirmation of the actual publication of the Notice of Rule Making in the newspaper to be retained in its files.~~

~~1052.5.2 The Notice shall be e-mailed to the Secretary of State at register@sosmail.state.ar.us with a date listing when the agency wishes the Notice to be published. The Notice will be posted on the Secretary of State's website for 30 days.~~

~~1052.5.3 The Notice shall be mailed to any person who requested advance notice of rule making proceedings.~~

1052.6.0 Initial Filing

~~1052.4.5~~ **1052.6.1 Initial Bureau of Legislative Research Filing** Every Division or Office must submit for review every initiating division must submit any proposed, revised, amended, changed, or repealed rule to the Secretary of State's Office and the Bureau of Legislative Research thirty (30) days before the expiration of the period for public comment.

1052.6.2 Secretary of State: One (1) copy of the rule (in Adobe PDF or Microsoft Word 6.0, or higher) must be submitted to the Secretary of State on disk or e-mailed to register@sosmail.state.ar.us. The rule will be submitted in "mark-up" form if the rule is an amendment to an existing rule. One (1) copy of a Summary of Rule must be submitted with a new rule. One (1) copy of a Summary of Changes must be submitted with a revised rule.

~~A. Bureau of Legislature Research:~~ Three (3) copies of the rule, and two (2) copies each of each of the proposed rule and the Legislative Questionnaire, and two (2) copies each the Financial Impact Statement, and the marked-up copy (see §1052.3.2 for format) must be submitted to the Legislative Council.

~~B. Statement and the mark-up (see Section 1052.1.2 for mark-up format) shall be filed. When filing a new rule, two (2) copies of a Summary of Rule must be submitted. Two (2) copies of a Summary of Changes are to be submitted with any revised rule.~~

~~1052.4.6 One copy each of the rule is to be file stamped and returned to the Division or Office. A cover letter should accompany the submission requesting that the rule be placed on the Legislative Administrative Rules and Regulations Subcommittee agenda for review. Providing a copy of the cover memorandum accompanying the submitted materials for date stamping and return to the agency is optional.~~

Filing The day after the thirty (30) day public review period expires the Division or Office shall file its rule with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research. Every promulgated rule must be filed at least ten (10) days prior to its effective date. Each rule adopted by an agency shall be effective ten (10) days after filing unless a later date is specified in the rule itself.

~~A. Secretary of State:~~ Two (2) paper copies each of the proposed rule and the Arkansas Register Transmittal Sheet, and one (1) copy each of the Notice of Rule Making, and the Financial Impact Statement must be filed with the Secretary of State. One (1) electronic copy of the rule in Word© format shall be e-mailed to the Secretary of State's office (addressee to be determined beforehand). The electronic copy may also be on a diskette and hand delivered at the time of filing. One (1) copy each of the rule and the transmittal stamped with the filing date will be returned to the Division or Office.

~~B. State Library:~~ One (1) copy of the proposed rule must be filed with the Arkansas State Library. Two (2) copies of the Arkansas State Library Agency Certification Form and one (1) copy of the Financial Impact Statement must accompany the proposed rule. One (1) copy of the Certification Form stamped with the filing date will be returned to the Division or Office. Fifteen (15) copies of the final rule shall be sent to the Coordinator of Document Services (682-2326) at the Arkansas State Library upon finalization of promulgation.

~~C. Bureau of Legislative Research:~~ Three (3) copies of the proposed rule, three (3) copies of the Bureau coversheet, three (3) copies of the marked-up copy, and three (3) copies of the

~~Financial Impact Statement must also be filed with the Bureau of Legislative Research. An electronic copy of the rule on diskette in Word© format shall also be filed with the Bureau, and if any modifications had been made to the draft rule during the public review period (see §1052.4.3), a summary of those changes must be submitted. One (1) copy each of the rule and coversheet stamped with the filing date will be returned to the Division or Office.~~

~~D. The Notice of Rule Making shall be mailed to all persons who have requested advance notice of rule making proceedings. The Division or Office must obtain confirmation of the actual publication of the Notice of Rule Making in the newspaper to be retained in its files.~~

~~1052.4.7 Arkansas Legislative Council—Administrative Rules and Regulations Subcommittee (Subcommittee)~~

~~The Subcommittee will review promulgated rules at their monthly session at the State Capitol. The Bureau of Legislative Research will place the rule on the Subcommittee's monthly agenda based on the information provided in the Legislative Questionnaire submitted to the Bureau by the promulgating agency during the initial filing (see §1052.4.4). The promulgating agency must schedule promulgation such that the public review period has been completed before the Subcommittee review date.~~

~~1052.4.8 If during the promulgation process the Division or Office elects to change, revise, or amend the proposed rule, there shall be a second review of the altered proposed rule by OCC for compliance with the Administrative Procedure Act. The change may require re-promulgation. The OCC will promptly advise the Division or Office if this becomes necessary.~~

1052.5 Emergency Filing

~~1052.4.7 Under an "Emergency" rule, the Division or Office may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it may choose, to issue an emergency rule. The Division or Office shall file with the proposed rule a statement that includes a finding of imminent peril to the public with the Bureau of Legislative Research. Two (2) copies of a Summary of Rule must be submitted when filing a new rule. Two (2) copies of a Summary of Changes must be submitted with a revised rule.~~

~~One copy each of the rule and the Legislative Questionnaire are to be file stamped and returned to the division or office. A cover letter must accompany the submission requesting that the rule be placed on the Legislative Administrative Rules and Regulations Subcommittee agenda for review. Providing a copy of the cover memorandum accompanying the submitted materials for date stamping and return to the agency is optional.~~

1052.7.0 Final Filing

~~1052.7.1 After the thirty (30) day public review period expires the initiating division shall file its final rule with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research. Every promulgated rule must be filed at least ten (10) days prior to its effective date. Each rule adopted by an agency shall be effective ten (10) days after filing unless a later date is specified in the rule itself.~~

~~1052.7.2 Secretary of State: Two (2) paper copies each of the proposed rule and the Arkansas Register Transmittal Sheet, and one (1) copy each of the Notice of Rule Making, and the Financial Impact Statement must be filed with the Secretary of State. One (1) copy of the rule (in Adobe PDF or~~

Microsoft Word 6.0, or higher) must be submitted to the Secretary of State on diskette at the time of the filing or e-mailed to register@sosmail.state.ar.us. One (1) paper copy each of the rule and the transmittal stamped with the filing date will be returned to the division or office.

1052.7.3 State Library: One (1) copy of the proposed rule must be filed with the Arkansas State Library. Two (2) copies of the Arkansas State Library Agency Certification Form and one (1) copy of the Financial Impact Statement must accompany the proposed rule. One (1) copy of the Certification Form stamped with the filing date will be returned to the division or office. Fifteen (15) copies of the final rule shall be sent to the Coordinator of Document Services (682-2326) at the Arkansas State Library upon finalization of promulgation.

1052.7.4 Bureau of Legislative Research: Three (3) copies of the proposed rule, three (3) copies of the Bureau coversheet, two (2) copies of the mark-up, two (2) copies of the Financial Impact Statement, and two (2) copies of the summary must also be filed with the Bureau of Legislative Research. One (1) copy each of the rule and coversheet stamped with the filing date will be returned to the division or office.

1052.8.0 Arkansas Legislative Council, Administrative Rules and Regulations Subcommittee (Subcommittee)

The Subcommittee will review promulgated rules at its monthly session at the State Capitol. The Bureau of Legislative Research will place the rule on the Subcommittee's monthly agenda based on the information provided in the Legislative Questionnaire submitted to the Bureau by the promulgating agency during the initial filing. The promulgating agency must schedule promulgation such that the public review period has been completed before the Subcommittee review date.

1052.9.0 Emergency Filing

Under an emergency rule, the division or office may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it may choose, to issue an emergency rule. The initiating division shall file with the proposed rule a statement that includes a finding that imminent peril to the public health, safety, or welfare, or loss of federal funds which requires issuance of the rule with fewer than ten (10) days notice. The ~~Division or Office~~ initiating division shall specifically state the factual reason for the finding to the public health, safety, or welfare, or loss of federal funds. The emergency rule will be effective immediately upon filing with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research, but for no longer than 120 days. Within the 120 days, the proposed rule must be promulgated according to §1052.4 above.

1052.6 ~~Petition For Issuance, Amendment, Or Repeal Of Rule~~

~~Any person has the right to petition the initiating Division or Office within DHS for the issuance, amendment, or repeal of any rule. The Division or Office must either initiate rule making proceedings or deny the petition in writing within thirty (30) days of the submission of such a petition.~~

1052.7 ~~Failure To Promulgate~~

~~Failure to promulgate a rule can result in a rule being declared null and void, and monetary liability to the Division or Office resulting from a rule being declared ineffective. Failure for any reason to comply with these promulgation requirements may result in discipline to the DHS employee who is responsible for the rule's promulgation.~~

~~1052.8 Declaratory Orders~~

~~The Department shall provide for the filing and prompt disposition of declaratory orders as to the applicability of any rule, statute, or order in force by it. These declaratory orders shall have the same status as agency orders in cases of adjudication. Petitions for declaratory orders shall be filed with the Division or Office issuing the rule that is the subject of the petition of the declaratory order. If this situation occurs, contact OCC for technical assistance.~~

~~1052.9 Conflicting Policies~~

~~Other policies or parts thereof in conflict with the contents of this policy are hereby repealed or amended as necessary.~~

~~1052.10 Originating Section/Department Contact~~

~~Office of Chief Counsel~~

~~P. O. Box 1437, Slot S260~~

~~Little Rock, AR 72203-1437~~

~~Telephone Number: (501) 682-8934~~

~~1052.11 Notice~~

~~Replacement Notation: This policy replaces DHS Policy 1052 previously issued with an effective date of August 10, 1995.~~

of imminent peril to the public health, safety, or welfare. The emergency rule will be effective immediately upon filing with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research, but for no longer than 120 days. Within the 120 days, the proposed rule must be promulgated according to Section 1052.2.0 above.

1052.10.0 Petition for Issuance, Amendment, or Repeal of Rule

Any person has the right to petition the initiating division or office within DHS for the issuance, amendment, or repeal of any rule. The division or office must either initiate rule making proceedings or deny the petition in writing within thirty (30) days of the submission of such a petition.

1052.11.0 Failure To Promulgate

Failure to promulgate a rule can result in a rule being declared null and void. Failure for any reason to comply with these promulgation requirements may result in discipline to the DHS employee who is responsible for the rule's promulgation.

1052.12.0 Declaratory Orders

The Department shall provide for the filing and prompt disposition of declaratory orders as to the applicability of any rule, statute, or order in force by it. These declaratory orders shall have the same status as agency orders in cases of adjudication. Petitions for declaratory orders shall be filed with the division or office issuing the rule that is the subject of the petition of the declaratory order. If this situation occurs, OCC should be contacted for technical assistance.

1052.13.0 Conflicting Policies

Other policies or parts thereof in conflict with the contents of this policy are hereby repealed or amended as necessary.

1052.14.0 Originating Section/Department Contact

Office of Chief Counsel
P. O. Box 1437, Slot S260
Little Rock, AR 72203-1437
Telephone Number: (501) 682-8934

Replacement Notation: This policy replaces DHS Policy 1052 dated June 17, 2002.